

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1. a. Whether there should be additional reimbursement of \$2,306.51 for date of service, 11-27-01.
- b. The request was received on 07/24/02.

## **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. Initial TWCC 60
    1. Position Statement - undated
    2. EOB
    3. HCFA-1500
  - b. Additional documentation requested on 08/07/02 and received on 08/15/02
    1. Position statement undated
    2. Physician's position statement dated 06/03/02
    3. TWCC 63-Recommendation for Spinal Surgery
    4. Second surgical opinion approval, dated 08/24/01
    5. Medical Records
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution dated 08/06/02
  - b. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of a letter requesting additional information to the insurance carrier on 08/16/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 08/19/02. The response from the insurance carrier was received in the Division on 08/22/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of "A letter Requesting Additional Information" is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 06/03/02

“The patient had evidence of some recurrent leg pain and was felt to have some fusion overgrowth causing foraminal stenosis. This patient subsequently underwent removal of the electrode as well as the cyst forming around it. When the hardware was removed the patient had gross motion with pseudarthrosis both anteriorly and posteriorly at 4-5 and posteriorly at 4-5 and 5-1. The bone graft that was present on x-rays had not attached to the transverse process at 4-5 or the sacrum. The patient consequently required augmentation of the fusion bone grafting the pedicle screw holes and new instrumentation in order to stabilize the spine. The screws were noted to be rotationally loose because of the development of the pseudarthrosis. This patient’s surgery was reasonable and made necessary and was certainly on an emergent basis with the patient’s spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level.”

2. Respondent: Letter dated 08/06/02

“The spinal surgery process was not followed. The TWCC63 was only for the hardware removal and foraminotomy. The SSO physician only recommended the foraminotomy and hardware removal. Additional procedures were performed that were not requested, not recommended and not authorized. An outpatient x-ray was performed on 11/26/01, the day prior to surgery. (Carrier) has no record of the provider calling prior to the surgery or after the surgery was performed to inform that additional surgery was required and request authorization for additional procedures. (Carrier) does not believe that (Requestor) is due any further reimbursement for date of service 11/27/01.”

### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 11/27/01.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor’s Table of Disputed Services, the Requestor billed the Carrier \$6,050.00 for services rendered on the date above.
4. Per the Requestor’s Table of Disputed Services, the Carrier paid the Requestor \$1,220.00 for services rendered on the date above.
5. Per the Requestor’s Table of Disputed Services, the amount in dispute is \$2,306.51 for services rendered on the date of service in dispute above.
6. The Requestor has submitted the Carrier’s EOBs that state, “X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600

(H)”; “Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE.” and “U693 BY CLINICAL PRACTICE STANDARDS, THIS PROCEDURE IS INCIDENTAL TO THE RELATED PRIMARY PROCEDURE BILLED.”

7. The Requestor has billed using modifier 80, “**Assistant Surgeon**”, for each CPT code in dispute. Pursuant to the MFG, modifier 80 reimbursement requirements are, “Documentation on the operating room record shall indicate the amount of time spent by the assistant surgeon in the operative session and the need for an assistant surgeon. Documentation shall substantiate the attendance of the assistant surgeon 70% of the time during the performance of one operative session. The reimbursement shall be 25% of the listed MAR of the surgical procedure(s).”
8. The following table identifies the disputed services and Medical Review Division's rationale:

DOS	CPT CODE	BILLED	PAID	EOB Denial Code(s)	MARS	REFERENCE	RATIONALE:
11/27/01	22830 80	\$1000.00	\$0.00	U693	\$3338.00	1994 Global Service Data for Orthopaedic Surgery (GSDOS); MFG; SGR (I) (D); CPT Descriptor	The Carrier has denied this service as “U693 – BY CLINICAL PRACTICE STANDARDS, THIS PROCEDURE IS CONSIDERED INCIDENTAL TO THE RELATED PRIMARY PROCEDURE BILLED.” The Requestor’s primary procedure is CPT Code 63042. Pursuant to the GSDOS, this service is not global to the primary procedure billed. The requestor has billed \$1000.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement “...shall be 25% of the listed MAR of the surgical procedure(s).” Additionally, this code is subject to the Multiple Procedure Rule. Reimbursement would in the amount of \$417.25 (25% of \$3338.00-MAR is \$834.50 reduced 50% -multiple procedure rule = \$422.50). However, the Provider has requested reimbursement in the amount of \$417.25. Reimbursement in the amount of <b>\$417.25</b> is recommended.
11/27/01	22625 80	\$1000.00	\$0.00	X388 Z772	\$2529.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (D); CPT Descriptor	The Carrier has denied this service as “X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H).”; “Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE.” The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this spinal surgery. The Requestor followed the appropriate procedure for spinal surgery approval in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, “Additional procedures were performed that were not requested, not recommended and not authorized.” However, the Requestor position statement states, “This patient’s surgery was reasonable and made necessary and was certainly on an emergent basis with the patient’s spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level.” This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The Requestor has billed \$1000.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement “...shall be 25% of the listed MAR of the surgical procedure(s).” Additionally, this code is subject to the Multiple Procedure Rule. Therefore, reimbursement in the amount of <b>\$316.13</b> (25% of \$2529.00-MAR is \$632.25 reduced 50% -multiple procedure rule = \$316.13) recommended.

11/27/01	22650 80	\$500.00	\$0.00	X388 Z772	\$637.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (E) (1); (I) (D) (2); CPT Descriptor	The Carrier has denied this service as “X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H).”; “Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE.” The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this 2001 spinal surgery. The Requestor followed the appropriate procedure in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, “Additional procedures were performed that were not requested, not recommended and not authorized.” However, the Requestor position statement states, “This patient’s surgery was reasonable and made necessary and was certainly on an emergent basis with the patient’s spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level.” This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The requestor has billed \$500.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement “...shall be 25% of the listed MAR of the surgical procedure(s).” Therefore, reimbursement in the amount of <b>\$159.25</b> (25% of \$637.00-MAR is \$159.25) is recommended.
11/27/01	22842 80	\$1000.00	\$0.00	X388 Z772	\$3400.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (E) (1); (I) (D) (2); CPT Descriptor	The Carrier has denied this service as “X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H).”; “Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE.” The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this 2001 spinal surgery. The Requestor followed the appropriate procedure in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, “Additional procedures were performed that were not requested, not recommended and not authorized.” However, the Requestor position statement states, “This patient’s surgery was reasonable and made necessary and was certainly on an emergent basis with the patient’s spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level.” This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The requestor has billed \$1000.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement “...shall be 25% of the listed MAR of the surgical procedure(s).” Therefore, reimbursement in the amount of <b>\$850.00</b> (25% of \$3400.00-MAR is \$850.00) is recommended.

11/27/01	21930 80	\$100.00	\$0.00	X388 Z772	\$303.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (D); CPT Descriptor	The Carrier has denied this service as "X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H)."; "Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE." The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this 2001 spinal surgery. The Requestor followed the appropriate procedure in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, "Additional procedures were performed that were not requested, not recommended and not authorized,. However, the Requestor position statement states, "This patient's surgery was reasonable and made necessary and was certainly on an emergent basis with the patient's spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level." This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The requestor has billed \$100.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement "...shall be 25% of the listed MAR of the surgical procedure(s)." Additionally, this code is subject to the Multiple Procedure Rule. Therefore, reimbursement in the amount of <b>\$37.88</b> (25% of \$303.00-MAR is \$75.75 reduced 50% -multiple procedure rule = \$37.88) recommended.
11/27/01	15570 80	\$500.00	\$0.00	X388 Z772	\$1012.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (D); CPT Descriptor	The Carrier has denied this service as "X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H)."; "Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE." The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this 2001 spinal surgery. The Requestor followed the appropriate procedure in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, "Additional procedures were performed that were not requested, not recommended and not authorized,. However, the Requestor position statement states, "This patient's surgery was reasonable and made necessary and was certainly on an emergent basis with the patient's spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level." This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The requestor has billed \$500.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement "...shall be 25% of the listed MAR of the surgical procedure(s)." Additionally, this code is subject to the Multiple Procedure Rule. Therefore, reimbursement in the amount of <b>\$126.50</b> (25% of \$1012.00-MAR is \$253.00 reduced 50% -multiple procedure rule = \$126.50) recommended.

11/27/01	15734 80	\$500.00	\$0.00	X388 Z772	\$1922.00	TWCC 133.206 (b) (1) (A) (m); MFG; SGR (I) (D); CPT Descriptor	The Carrier has denied this service as "X388 THIS SERVICE WAS NOT PRE-AUTHORIZED IN CONFORMANCE WITH THE TWCC RULE 134.600 (H)."; "Z772 (F) THIS BILL HAS BEEN REVIEWED BY A REGISTERED NURSE." The Requestor has submitted a copy of the TWCC 63 and second surgical opinion approval, dated 08/24/01. Preauthorization is not required for this 2001 spinal surgery. The Requestor followed the appropriate procedure in accordance with TWCC Rule 133.206. In their response statement, the Carrier states, "Additional procedures were performed that were not requested, not recommended and not authorized,. However, the Requestor position statement states, "This patient's surgery was reasonable and made necessary and was certainly on an emergent basis with the patient's spine open with a fusion that was not solid. If indeed foraminotomies and removal of his hardware would have been only performed the patient would have had an unstable spine that could have resulted in significant neurologic injury at that level." This would indicate a medical emergency at the time of the actual surgery pursuant to TWCC 133.206 (b) (1). The requestor has billed \$500.00 for services provided. Pursuant to the MFG, modifier 80 reimbursement "...shall be 25% of the listed MAR of the surgical procedure(s)." Additionally, this code is subject to the Multiple Procedure Rule. Therefore, reimbursement in the amount of <b>\$240.25</b> (25% of \$1922.00-MAR is \$480.50 reduced 50% -multiple procedure rule = \$240.25) recommended.
<b>Totals</b>		\$4600.00	\$0.00				The Requestor is entitled to reimbursement in the amount of <b>\$2,147.26</b> .

The above Findings and Decision are hereby issued this 27<sup>th</sup> day of December 2002.

Denise Terry  
Medical Dispute Resolution Officer  
Medical Review Division

DT/dt

### V. ORDER

Pursuant to Sections 402.042, 413.016, 413.031, and 413.019 the Medical Review Division hereby ORDERS the Respondent to remit **\$2,147.26** plus all accrued interest due at the time of payment to the Requestor within 20 days receipt of this order.

This Order is hereby issued this 27<sup>th</sup> day of December 2002.

Carolyn Ollar  
Supervisor - Medical Dispute Resolution Officer  
Medical Review Division

CO/dt